

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
PORT TOWNSEND PAPER)
CORPORATION,)
)
Appellant,)
)
v.)
)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
)
Respondent.)
_____)

PCHB No. 86-136

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER. the appeal of two civil penalties totaling \$25,000
for exceeding the limits of a National Pollution Discharge Elimination
System (NPDES) waste discharge permit, came on for hearing before the
Pollution Control Hearings Board, Lawrence J. Faulk, Chairman,
(presiding) and Wick Dufford convened at Lacey, Washington on October
6, 1986. Respondent elected a formal hearing pursuant to RCW
43.21B.230.

1 Appellant was represented by Attorney of Law Michael R. Thorp.
2 Respondent appeared by Charles W. Lean, Assistant Attorney General.
3 Reporter Kim L. Otis recorded the proceedings.

4 Witnesses were sworn and testified. Exhibits were examined. From
5 testimony heard and exhibits examined, the Pollution Control Hearings
6 Board makes these

7 FINDINGS OF FACT

8 I

9 Appellant Port Townsend Paper Company (PTP) is a corporation
10 engaged in the pulp and paper business in the State of Washington. It
11 operates a kraft mill in Port Townsend, Washington.

12 II

13 Respondent Department of Ecology (DOE) is an agency of the State
14 of Washington, with responsibilities for administering the laws of the
15 state concerning water pollution prevention and control, including the
16 National Pollutant Discharge Elimination System (NPDES) permit program
17 authorized by federal law.

18 III

19 On March 6, 1984, Ecology issued an NPDES Permit to the PTP mill
20 establishing effluent limitations for discharges to Port Townsend
21 Bay. Separate effluent limitations were established for
22 "Configuration A" and "Configuration B". The latter were to apply to
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increased production, following completion of an extensive mill modernization program. The limitations applicable in the instant case are those for "Configuration A". As relevant, these are:

<u>Parameter</u>	<u>Effluent Limits</u>	
	<u>Daily Average</u>	<u>Daily Maximum</u>
Biochemical oxygen Demand (5-day)	2,500 lbs/day	5,000 lbs/day
Total Suspended Solids	5,400 lbs/day	10,800 lbs/day

The daily average is the average of daily values obtained over a months time. The daily maximum is defined as the greatest value for any day.

IV

The liquor which emerges from the pulping process at PTP is burned in a recovery furnace in order to reclaim costly chemicals. The economic operation of the mill depends on avoiding significant loss of this chemical-laden liquor to the waste treatment system.

Huge quantities of water are used to wash the liquor from the pulp. Waste water from this and other plant operations is processed through a treatment system which includes an aerated stabilization basin (ASB). The ASB contains four channels or runs baffled from each other. In the first three of these, mechanical aerators beat air into the water to stimulate biological activity. The last channel contains a quiescent zone, without aerators, to provide for settling.

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2 In the winter of 1984, PTP experienced some exceedances of the
3 limitations for total suspended solids (TSS). At the time the company
4 suspected a problem with sludge depth in the ASB and planned a summer
5 program to investigate. DOE levied a \$1,000 civil penalty for these
6 violations which it later mitigated to \$500. PTP paid the latter
7 amount.

8 In November of 1984, both TSS and biochemical oxygen demand (BOD)
9 exceedances occurred. Again, the TSS problem was thought to be
10 traceable to the ASB's sludge layer, and plans were formulated to
11 remove the sludge.

12 The BOD difficulties were attributed to disruption of the
13 biological treatment system resulting from a significant drop in pond
14 temperature. This temperature drop was caused by two factors:
15 1) reduced heat input from influent following a mill wide shutdown and
16 2) cold weather. DOE assessed a \$2500 penalty which PTP paid.

17 During January and February of 1985, PTP exceeded the permit
18 limits for TSS, and DOE imposed \$5000 civil penalty. Sludge depth was
19 identified as a major contributor to the TSS problem. PTP ultimately
20 paid the fine.

VI

In January 1985, PTP asked DOE for permission to dredge sludge from the ASB. In March 1985, PTP was advised that the proposed and disposal of sludge would require approval from county health authorities. The company applied to the county which, it developed, had never processed an application of this type before. Permission for land disposal was not received until August 1985. Thereafter, the company commenced dredging and continued until mid-October when the weather became too rainy for land application to continue. When dredging ceased, about one-third of the material to be dredged had been removed.

VII

The PTP kraft mill dates from the late 1920's. PTP bought it from Crown Zellerbach in December of 1983 and, thereafter, set in motion planning for major modernization program, costing upwards of \$30 million. The objective was to replace and upgrade facilities in order to provide an additional 200 tons per day of production to a 450 ton per day mill.

Part of the modernization began to be implemented from October through March 1985 with the startup of several major process systems. In the course of putting the new equipment on line and switching liquor from tank to tank, heavy losses of process liquor to the

1 treatment plant occurred. This liquor is the prime contributor to BOD
2 loadings to the ASB.

3 Prior to startup of the new equipment four larger aerators were
4 added to the 13 existing aerators in the ASB pond. However, even with
5 the additional aeration, the system was unable to function within the
6 permit's BOD limits. Unusually cold weather in late 1985 and early
7 1986 contributed to the problem.

8 VIII

9 For November of 1985, PTP reported daily average TSS discharges at
10 6126 pounds per day, exceeding the 5400 pounds per day permit
11 limitation. Daily average BOD for the month was reported at 2670
12 pounds per day, exceeding the 2500 pounds per day permit ceiling.

13 For December of 1985, these figures were higher: Daily average
14 TSS at 7219 pounds per day; daily average BOD at 3247 pounds per day.
15 In December, the daily maximum for both TSS and BOD were also exceeded.

16 For January 1986, the discharge numbers were higher still. Daily
17 average TSS was 10,579 pounds per day; daily average BOD was 7,579
18 pounds per day; daily average BOD was 7,544 pounds per day. The daily
19 maximum for both TSS and BOD also exceeded the permit limits by larger
20 amounts.

21 In February 1986, the figures started to come down, but the permit
22 exceedances continued. Daily average TSS was 9,329 pounds per day.

1 Daily average BOD was 3,309 pounds per day. The TSS daily maximum was
2 exceeded, but the BOD daily maximum was within permit requirements.

3 In March and April 1986, TSS problems continued. BOD, however,
4 was successfully brought under permit limits.

5 IX

6 On March 5, 1986, DOE assessed a penalty of \$10,000 for PTP's
7 November and December 1985 BOD and TSS exceedances. On March 20,
8 1986, PTP applied to the agency for relief from the penalty, citing
9 liquor losses associated with installation and start-up of new
10 equipment and cold weather as explanations for the problems over the
11 entire October - March period. DOE affirmed the penalty on April 14,
12 1986. PTP paid the fine.

13 X

14 On April 14, 1986, the same day it affirmed its penalty for
15 November and December 1985, DOE issued Notice of Penalty incurred and
16 Due No. DE 86-285 to PTP. This Notice assessed a \$10,000 penalty for
17 PTP's January 1986 BOD and TSS exceedances. On April 30, 1986, PTP
18 applied for relief from this penalty, noting that the discharges
19 resulted from the same equipment start-up and weather problems already
20 explained in its response to the previous penalty.

21 On May 2, 1986, DOE issued Notice of Penalty Incurred and Due No.
22 DE 86-411 to PTP. This Notice assessed a \$15,000 penalty for PTP's
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1 February 1986 BOD and TSS exceedances. On May 16, 1986, PTP made a
2 request for relief from this penalty, stating that it was "the third
3 penalty against [PTP] for a single situation which occurred at the
4 mill," and referencing its request for relief from the penalty for
5 January.

6 On June 30, 1986, DOE affirmed the penalties for both the January
7 and the February 1986 discharges. On July 30, 1986, PTP filed the
8 instant appeal seeking to have both these penalties eliminated.

9 XI

10 From the time of the initial upsets in late October 1985 to early
11 March 1986 when new evaporators and washers were on-line and
12 operating, the mill exerted considerable effort to bring the problems
13 under control. They had a high internal incentive to do so, because
14 the liquor losses they were experiencing were exacting their own
15 substantial economic penalty.

16 XII

17 By the time DOE affirmed the \$10,000 penalty issued for the
18 November and December 1985 discharges, the agency had long - since had
19 the company's monitoring reports for January and February 1986. By
20 the time DOE issued the additional penalties for January and February
21 the entire October - March sequence was known to it. By that time, it
22 was clear that the discharge problems resulting from winter weather
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1 and the transition to new equipment had been brought under control.
2 The bugs had been worked out in the mill, and the bugs had been
3 revived in the ASB. The incident was already over.

4 (The continuing TSS exceedances reflected the separate
5 pre-existing sludge problem for which the DOE - approved solution was
6 not more penalties, but the completion of ASB dredging in the summer
7 and fall of 1986.)

8 XIII

9 There is no evidence that the BOD and TSS exceedances from PTP
10 during the winter of 1985-86 caused any adverse public health or
11 environmental impact.

12 XIV

13 Any Conclusion of Law which should be deemed a Finding of Fact is
14 hereby adopted as such.

15 From these Findings the Board makes these

16 CONCLUSIONS OF LAW

17 I

18 There is no argument that the permit violations which are the
19 subject of these penalties did, in fact, occur. Thus, the assessment
20 of penalties pursuant to RCW 90.48.144 was proper. That section
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1 of the state water pollution control statute authorizes civil
2 penalties whenever any person violates the terms or conditions of a
3 waste discharge permit.

4 II

5 The civil penalties provided for in RCW 90.48.144 are imposed on a
6 strict liability basis. Explanatory matters such as upsets, start-up
7 problems or bad weather do not operate to excuse violations. Such
8 matters may, however, properly bear on the amount of penalty assessed.

9 III

10 The argument here is over penalty amounts. In 1985 the
11 Legislature raised the maximum civil penalty per violation under RCW
12 90.48.144 from five to ten thousand dollars. Section 2, Chapter 316,
13 Laws of 1985.

14 Also the amendment set forth certain matters to be considered in
15 setting penalties

16 The penalty amount shall be set in consideration of
17 the previous history of the violator and the
18 severity of the violation's impact on public health
19 and/or the environment in addition to other
relevant factors.

20 We believe that other relevant factors include the likely effect
21 of the penalties on influencing corrective behavior. The prime
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1 purpose of civil penalties is remedial rather than retributive. They
2 are aimed at securing the correction of problems and the deterrence of
3 future violations. See Cosden Oil Company v. DOE, PCHB No. 85-111
4 (1985).

5 IV

6 Here the previous history shows prior violations and a pattern of
7 escalating penalties assessed by DOE in response.

8 No impact on public health or the environment was shown, but some
9 of the violations far exceeded the permit limits, established as
10 attainable by reasonable technology.

11 At least seven separate violations were involved in the January
12 and February 1986 exceedances. The total of \$25,000 assessed was
13 considerably less than the possible maximum under the statute.

14 However, both the \$10,000 for January and the \$15,000 for February
15 represent an escalation of penalty over the aggregate \$10,000 assessed
16 for the two months of November and December 1985.

17 PTP argues that the exceedances experienced between October 1985
18 and March 1986 should all be regarded as essentially one incident for
19 which they have already paid a sufficient penalty. We do not agree
20 that no further penalties should have been levied, but do believe that
21 progressively increasing the penalty amount for January and February
22 1986 was inappropriate. The record discloses that these increases,
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1 imposed in April and May, could not have served as added inducements
2 to correct the problem. The whole episode was over and resolved by
3 the time these fines were assessed.

4 V

5 Under all the facts and circumstances, we conclude that
6 substantial fines are justified here, but decide that the escalation
7 of penalties for January and February 1986 was unreasonable in light
8 of the remedial aims of the law. We hold that an aggregate penalty of
9 \$10,000 for these two months is appropriate.

10 VI

11 Any Finding of Fact which is deemed a Conclusion of Law is hereby
12 adopted as such.

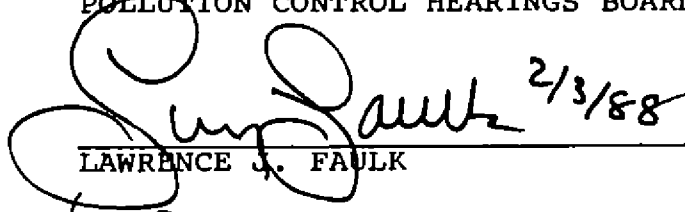
1 From these Conclusions, the Board enters this


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3 ORDER

4 The civil penalties assessed by the Department of Ecology against
5 Port Townsend Paper in DE 86-285 and DE 86-411 are abated to \$5,000
6 each and, as such, are affirmed.

7
8 DONE at Lacey, Washington this 3d day of February,
9 1988.

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11 POLLUTION CONTROL HEARINGS BOARD

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13  2/3/88
14 LAWRENCE J. FAULK

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16 WICK DUFFORD

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25 PCHB No. 86-136
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER